

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

EDWIN GUANTE-VELÁZQUEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 08-1153 (JAF)

(Crim. No. 05-356)

O R D E R

Petitioner Edwin Guante-Velázquez requests a certificate of appealability ("COA") from this court. Docket No. 20. On November 9, 2006, Petitioner pled guilty to conspiring to import and possess with the intent to distribute five kilograms or more of cocaine in violation of 21 U.S.C. §§ 841(a)(1), 846, 952(a), 963, and 18 U.S.C. § 2. Crim. No. 05-356, Docket Nos. 103, 159.

On February 4, 2008, Petitioner petitioned for relief under 28 U.S.C. § 2255, Docket No. 1; Respondent United States of America opposed on June 13, 2008, Docket No. 8. On August 7, 2008, we denied Petitioner's petition for his failure to present arguments relating to his claim for ineffective assistance of counsel. Docket No. 9.

On January 7, 2009, Petitioner moved for relief under Rule 60(b), arguing that he had indeed advanced arguments in support of his earlier petition.¹ Docket No. 14. We denied his motion on

¹ Rule 60(b) provides relief from a final judgment, order or proceeding for, inter alia, "mistake, inadvertence, surprise or excusable neglect" within one year from the entry of the judgment. Fed. R. Civ. P. 60(b)(1), (c)(1). However, relief under Rule 60(b) can only be invoked in "special situations justifying extraordinary relief." Silk v. Sandoval,

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1 January 12, 2009. Docket No. 15. On April 7, 2009, Petitioner filed
2 the instant motion, seeking a COA to appeal our denial of his Rule
3 60(b) motion. Docket No. 20. ____To appeal a final order of the district
4 court in § 2255 proceedings, a petitioner must first obtain a COA, 28
5 U.S.C. § 2253(c)(1)(B), which may issue from the district court,
6 Grant-Chase v. Commissioner, 145 F.3d 431, 435 (1st Cir. 1998). We
7 may grant a COA only upon "a substantial showing of the denial of a
8 constitutional right." 28 U.S.C. § 2253(c)(2). The applicant "must
9 demonstrate that reasonable jurists would find the district court's
10 assessment of the constitutional claims debatable or wrong." Miller-
11 El v. Cockrell, 537 U.S. 322, 338 (2003) (quoting Slack v. McDaniel,
12 529 U.S. 473, 484 (2000)). If granted, the COA "shall indicate which
13 specific issue or issues satisfy the showing required" to warrant
14 review by the court of appeals. 28 U.S.C. § 2253(c)(3).

15 In support of the instant challenge, Petitioner cites parts of
16 the record in the prior criminal case to suggest an inadequacy of
17 proof to sustain a conviction for a drug conspiracy in April 2005.
18 Docket No. 20; see Docket Nos. 1, 14. Petitioner insists that the
19 cited evidence could only support a conviction for accessory after
20 the fact, and that his guilty plea was invalid as his counsel failed
21 to fully apprise him of his options. Docket No. 20.

22 There are two fatal flaws in Petitioner's reasoning. Firstly,
23 Petitioner does not argue that, but for his counsel's error, he would
24 have insisted on going to trial instead of pleading guilty. See Hill
25 v. Lockhart, 474 U.S. 52, 59 (1985).

435 F.2d 1266, 1268 (1st Cir. 1971).

